

REMARKS

I. Status of the Application

At the time of the Action, Claims 1-3, 8-16, and 50-55 were pending. Claims 1-3, 8, 10-13 and 16 stand rejected under Section 102(b) as being anticipated by U.S. Patent No. 5,959,245 to Moe et al. (Moe). Claim 9 stands rejected under Section 103(a) as being unpatentable over Moe. Claims 14 and 15 stand rejected under Section 103(a) as unpatentable over Moe in view of U.S. Patent No. 4,343,660 to Martin (Martin). Claims 1 and 50-55 stand rejected under Section 103(a) as unpatentable based on U.S. Patent No. 6,205,268 to Chraplyvy et al. (Chraplyvy) in view of Moe. These rejections are addressed below.

II. The Section 102(b) Rejections

The Action contends that Moe anticipates Claims 1-3, 8, 10-13 and 16 under Section 102(b). The Action specifically states that "the cable of Moe et al. comprises structure and materials as claimed. Accordingly, the properties and characteristics as recited in the claimed invention are inherent from the cable of Moe" (*see* the Action at page 3). In responding to Applicants' argument set forth in Applicants' paper dated April 3, 2006 that Moe is limited to 50 ohm cables and does not disclose a return loss of -25 dB, the Action states that "Moe discloses the cables of his invention have found particular utility in 50 ohms applications. Moe, however, does not disclose [that] his cables cannot be used in other applications." The Action at page 5.

In response, Applicants respectfully but firmly submit that a reference cannot be applied under Section 102(b) for what it does not disclose. All of the pending claims recite a cable with a nominal impedance of 75 ohms. Moe does not disclose a 75 ohm cable. The fact that Moe may not be limited to a 50 ohm cable (a point that Applicants do not concede) does not allow Moe to be interpreted as disclosing a 75 ohm cable for the purposes of Section 102(b). Accordingly, Applicants submit that the rejection under Section 102(b) is improper and should be withdrawn.

In addition, Moe fails to disclose a return loss in its cable of -25 dB. Again, it is improper to interpret Moe as disclosing this claim recitation when it is not present. As such, the rejection under Section 102(b) is improper and should be withdrawn for this additional reason.

III. The Section 103(a) Rejections

The Action contends that Claims 1 and 50-55 are unpatentable under Section 103(a) based on Chraplyvy in view of Moe. The Action states that:

[i]t would have been obvious to one skilled in the art to use coaxial cables taught by Moe et al. in the network of Chraplyvy et al. since the cable of Moe et al. has enhanced bending and handling characteristics and is an improved low-loss and improved attenuation properties coaxial cable.

The Action at page 5. In responding to Applicants' argument in Applicants' paper of April 6, 2006 that the Moe cable would not be operable in an HFC network, the Action states:

[a]lthough the preamble of claims 50-55 recite a hybrid fiber cable (HFC network), the claimed invention is directed to a coaxial cable which is then used in the HFC network. It has been held that the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. If the cable of Moe cannot be used in an HFC network as taught by Chraplyvy, then how can the claimed cable be. They are both identical in structure and material.

The Action at page 7.

In response, Applicants note that, as discussed above, the recited cable is **not** identical in structure and material to the cable discussed in Moe. The Moe cable is a 50 ohm cable that does **not** have the electrical characteristics of the recited cable. As additional evidence of the differences between the Moe cable and that recited in the claims, Applicants respectfully direct

the Examiner's attention to the Declaration of Robert Wessels (the Wessels Declaration - an unsigned copy is attached; an executed copy will be submitted in the near future). The Wessels Declaration states that the Moe cable is a 50 ohm cable designed to have enhanced mechanical performance, in particular controlled peel strength in the core/outer conductor interface, core stiffness relative to sheath stiffness, and minimum bend diameter. The Wessels Declaration at paragraph 3. The cables defined by the pending claims are 75 ohm cables intended for use in an HFC network with broadband electrical performance attributes, such as a structural return loss of at least -25 dB, a velocity of propagation of 88, and a usable bandwidth between 5 MHz and the cut-off frequency of the cable. *Id.* at paragraph 4. **The Moe cable does not have this combination of properties.** *Id.*

The Wessels Declaration makes it very clear that the cables recited in the pending claims and the Moe cable are **not**, in contrast to the statements in the Action, "identical in structure and materials." Instead, the cables recited in the pending claims are formed of materials selected to have the combination of properties recited in the claims. As such, Applicants respectfully submit that the rejection under Section 103(a) based on Moe is improper.

Further, the Wessels Declaration states that the 50 ohm cable of Moe would not be appropriate for an HFC network, "because the 50 Ohm nominal impedance simply does not provide the transmission capacity or interface properly with active network components." The Wessels Declaration at paragraph 5. Thus, the combination of the Moe cable with an HFC network would not be operable. One of ordinary skill in this art would have understood that the Moe cable would not be appropriate for combination with Chraplyvy to form an HFC network. Thus, the rejection under Section 103(a) based in Chraplyvy and Moe is improper for this additional reason.

In view of the foregoing, Applicants respectfully submit that it would not have been obvious for one of ordinary skill in this art to conceive the claimed subject matter based on the teachings of Chraplyvy and Moe. As such, Applicants respectfully request that the rejections under Section 103(a) be withdrawn.

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IV. Conclusion

Inasmuch as the outstanding issues in the Office Action have been addressed, Applicants respectfully request that this application be passed to allowance and issuance.

Respectfully submitted,

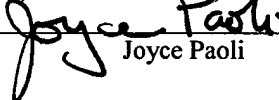


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